No. 14-844

IN THE

Supreme Court of the United States

ANTOINE BRUCE,

Petitioner,

v.

CHARLES E. SAMUELS, JR., *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR PETITIONER

ANTHONY F. SHELLEY
Counsel of Record
LAURA G. FERGUSON
DAWN E. MURPHY-JOHNSON
ADAM W. BRASKICH
KATHLEEN T. WACH
MILLER & CHEVALIER CHTD.
655 15th Street NW, Suite 900
Washington, D.C. 20005
(202) 626-5800
E-mail: ashelley@milchev.com

QUESTION PRESENTED

The Prison Litigation Reform Act ("PLRA") requires prisoners who bring federal civil actions or appeals *in forma pauperis* to pay court filing fees in installments over time. After an initial partial filing fee, the remainder is to be paid through "monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. § 1915(b)(2). The question presented is:

When a prisoner files more than one civil action or appeal *in forma pauperis*, does § 1915(b)(2) cap the monthly exaction for filing fees at 20% of the preceding month's income regardless of the number of cases for which the prisoner owes filing fees, or must the prisoner pay 20% of his preceding month's income for each case for which he owes a filing fee?

ADDITIONAL PARTIES TO THE PROCEEDING BELOW

Appellants

Jeremy Brown (Federal Prisoner: 31123-074)

Andrew Wesley Hobbs (Federal Prisoner: 30723-077)

John Samuel Leigh (Federal Prisoner: 03857-087)

Jeremy Pinson (Federal Prisoner: 16267-064)

Movant

Mikeal Glenn Stine (Federal Prisoner: 55436-098)

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

ADDITIONAL PARTIES TO THE PROCEEDING BELOW ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT 1

A. The PLRA Statutory Framework 2

1. Initial Partial Payment of Filing Fee 3

2. Monthly Installment Payments 4

3. Controls for Specific Abusive Filings and Filers 5

4. Safety-Valve Provisions 6

B. Proceedings Below 7

SUMMARY OF ARGUMENT 12

ARGUMENT 16

I. THE PLRA'S TEXT REQUIRES THE PER-PRISONER APPROACH 16

II. THE STATUTORY CONTEXT CONFIRMS THAT CONGRESS INTENDED THE PER-PRISONER APPROACH 22

III. THE PER-PRISONER APPROACH BEST SERVES THE PLRA'S FULL OBJECTIVES 32

A. In the PLRA, Congress Sought to Strike a Balance Between Reducing Frivolous Prisoner Lawsuits and Preserving Prisoners' Capacity to File Meritorious Claims 33

B. The Per-Prisoner Approach, But Not the Per-Case Approach, Effectuates the PLRA's Competing Goals 36

C. The PLRA's Multiple Controls Have Already Succeeded in Reducing Prisoner Litigation, Making a Per-Case Sanction Unnecessary 40

IV. THE CANON OF STATUTORY CONSTRUCTION UNDER WHICH COURTS SEEK TO AVOID CONSTITUTIONAL QUESTIONS COMPELS THE PER-PRISONER APPROACH 42

V ADMINISTRATIVE FEASIBILITY CONSIDERATIONS NECESSITATE THE PER-PRISONER APPROACH 49

CONCLUSION 54

APPENDIX – 28 U.S.C. § 1915 1

TABLE OF AUTHORITIES

Page(s)

Cases

Adkins v. E. I. DuPont de Nemours & Co.,
335 U.S. 331 (1948) 48

Atchison v. Collins,
288 F.3d 177 (5th Cir. 2002) 11, 20, 31

Boddie v. Connecticut,
401 U.S. 371 (1971) 43

Bounds v. Smith,
430 U.S. 817 (1977) 44

BP Am. Prod. Co. v. Burton,
549 U.S. 84 (2006) 16

Brown v. Plata,
131 S. Ct. 1910 (2011) 44

Burns v. Ohio,
360 U.S. 252 (1959) 44

Castle v. Eurofresh, Inc.,
731 F.3d 901 (9th Cir. 2013) 37

Castro v. United States,
540 U.S. 375 (2003) 48

Chachere v. Barerra,
135 F.3d 950 (5th Cir. 1998) 27

Christensen v. Big Horn Cnty. Bd. of Cnty. Comm'rs,
374 F. App'x 821 (10th Cir. 2010) 11, 20, 31

Christopher v. Harbury,
536 U.S. 403 (2002) 43

Clark v. Suarez Martinez,
543 U.S. 371 (2005) 42

Coleman v. Tollefson,
135 S. Ct. 1759 (2015) ..... *passim*

Dan's City Used Cars, Inc. v. Pelkey,
133 S. Ct. 1769 (2013) 24

Davis v. Mich. Dep't of Treasury,
489 U.S. 803 (1989) 22

DeBlasio v. Gilmore,
315 F.3d 396 (4th Cir. 2003) 39

Dolan v. U.S. Postal Serv.,
546 U.S. 481 (2006) 32

Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council,
485 U.S. 568 (1988) 42

Estelle v. Gamble,
429 U.S. 97 (1976) 48

Fuller v. Oregon,
417 U.S. 40 (1974) 48

Gambetta v. Prison Rehabilitative Indus. & Diversified Enters., Inc.,
112 F.3d 1119 (11th Cir. 1997) 37

Gay v. Tex. Dep't of Corr. State Jail Div.,
117 F.3d 240 (5th Cir. 1997) 39

In re Grant,
635 F.3d 1227 (D.C. Cir. 2011) 11

Green v. Nottingham,
90 F.3d 415 (10th Cir. 1996) 12

Griffin v. Illinois,
351 U.S. 12 (1956) 44

Haines v. Kerner,
404 U.S. 519 (1972) 48

Hampton v. Hobbs,
106 F.3d 1281 (6th Cir. 1997) 27

Holt v. Hobbs,
135 S. Ct. 853 (2015) 44

Hope v. Pelzer,
536 U.S. 730 (2002) 44

Hudson v. McMillian,
503 U.S. 1 (1992) 45

Hutto v. Finney,
437 U.S. 678 (1978) 45

Johns v. Lemmon,
980 F. Supp. 2d 1055 (N.D. Ind. 2013) 37

Johnson v. California,
543 U.S. 499 (2005) 44

Johnson v. McNeil,
217 F.3d 298 (5th Cir. 2000) 4, 28

Jones v. Bock,
549 U.S. 199 (2007) 2, 34, 35, 36

King v. Burwell,
135 S. Ct. 2480, 192 L. Ed. 2d 483 (2015) 22, 33

In re Kissi,
652 F.3d 39 (D.C. Cir. 2011) 22

Lefkowitz v. City-Equity Grp., Inc.,
146 F.3d 609 (8th Cir. 1998) 11, 20

Lewis v. Casey,
518 U.S. 343 (1996) 44

Losee v. Maschner,
113 F. Supp. 2d 1343 (S.D. Iowa 1998) 37

M.L.B. v. S.L.J.,
519 U.S. 102 (1996) 43

Madden v. Myers,
102 F.3d 74 (3d Cir. 1996) 12

Martin v. United States,
96 F.3d 853 (7th Cir. 1996) 12

McGann v. Comm'r, Soc. Sec. Admin.,
96 F.3d 28 (2d Cir. 1996) 39

McGore v. Wrigglesworth,
114 F.3d 601 (6th Cir. 1997) 28

Mohamad v. Palestinian Auth.,
132 S. Ct. 1702 (2012) 41

Murray v. Dosal,
150 F.3d 814 (8th Cir. 1998) 27

N.Y. State Dep't of Social Servs. v. Dublino,
413 U. S. 405 (1973) 33

In re Nagy,
89 F.3d 115 (2d Cir. 1996) 12

Neitzke v. Williams,
490 U.S. 319 (1989) 33, 34

Newlin v. Helman,
123 F.3d 429 (7th Cir. 1997) ..... *passim*

Nussle v. Willette,
224 F.3d 95 (2d Cir. 2000) 35

Porter v. Nussle,
534 U.S. 516 (2002) 35

Putzer v. Attal,
No. 2:13-CV-00165-APG, 2013 WL
4519351 (D. Nev. Aug. 23, 2013) 39

Rodriguez v. United States,
480 U.S. 522 (1987) 41, 42

Roller v. Gunn,
107 F.3d 227 (4th Cir. 1997) 28

*Rowland v. Cal. Men's Colony, Unit II
Men's Advisory Council*,
506 U.S. 194 (1993) 48

Sebelius v. Cloer,
133 S. Ct. 1886 (2013) 16

Shabazz v. Parsons,
127 F.3d 1246 (10th Cir. 1997) 27, 29

Siluk v. Merwin,
783 F.3d 421 (3d Cir. 2015) ..... *passim*

Skinner v. Switzer,
562 U.S. 521 (2011) 35, 41

Smith v. Wade,
461 U.S. 30 (1983) 45

In re Stone,
118 F.3d 1032 (5th Cir. 1997) 11

Talley-Bey v. Knebl,
168 F.3d 884 (6th Cir. 1999) 4

Thomas v. Holder,
750 F.3d 899 (D.C. Cir. 2014) 44

Torres v. O'Quinn,
612 F.3d 237 (4th Cir. 2010) ..... *passim*

Tucker v. Branker,
142 F.3d 1294 (D.C. Cir. 1998) 23

Turley v. Rednour,
729 F.3d 645 (7th Cir. 2013) 37

In re Tyler,
110 F.3d 528 (8th Cir. 1997) 12

United States v. Jackson,
390 U.S. 570 (1968) 46, 48

United States v. Kras,
409 U.S. 434 (1973) 43

Washlefske v. Winston,
234 F.3d 179 (4th Cir. 2000) 37

Whitfield v. Scully,
241 F.3d 264 (2d Cir. 2001) 11, 26, 30, 43

Wolff v. McDonnell,
418 U.S. 539 (1974) 44

Woodford v. Ngo,
548 U.S. 81 (2006) 5, 35, 41

Statutes

Act of July 20, 1892, ch. 209, 27 Stat. 252 ..... 33, 34

28 U.S.C. § 1254 1

Prison Litigation Reform Act 1
Pub. L. No. 104-134, 110 Stat. 1321-66 2
28 U.S.C. § 1913 37
28 U.S.C. § 1914 37
28 U.S.C. § 1915 (1995) 34

28 U.S.C. § 1915 ..... *passim*
28 U.S.C. § 1915A 6, 41
28 U.S.C. § 1917 37

42 U.S.C. § 1983 6

42 U.S.C. § 1997e 5, 6, 41

Colo. Rev. Stat. Ann. § 13-17.5-103 52

Idaho Code Ann. § 31-3220A 52

La. Rev. Stat. Ann. 15:1186 52

Mass. Gen. Laws Ann. ch. 261, § 29 52

Mich. Comp. Laws Ann. § 600.2963 53

Mo. Ann. Stat. § 506.372 53

Okla. Stat. Ann. tit. 57, § 566.3 53

42 Pa. Cons. Stat. Ann. § 6602 53

S.C. Code Ann. § 24-27-100 53

Tenn. Code Ann. § 41-21-807 53

Legislative History

H.R. Rep. No. 52-1079 (1892) 33

141 Cong. Rec. 27,042 (1995) 35

141 Cong. Rec. 27,044 (1995) 35

141 Cong. Rec. S7526 (daily ed. May 25, 1995) 23, 38

141 Cong. Rec. S14,413-14 (daily ed. Sept. 27, 1995) 38

141 Cong. Rec. S14,628 (daily ed. Sept. 29, 1995) 35

Other Authorities

28 C.F.R. § 540.21 47

28 C.F.R. § 540.105 47

La. Admin. Code tit. 22, § 331 37

Alison Bo Andolena, *Can They Lock You Up and Charge You For It?: How Pay-to-Stay Corrections Programs May Provide a Financial Solution for New York and New Jersey*, 35 Seton Hall Legis. J. 94 (2010), *available at* http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1003&context=shlj 52

Jennifer Brady & Amanda Gordon, Conn. Gen. Assembly Office of Legislative Research, *Inmate Work Activities (2011-R-0191)* (May 6, 2011), http://www.pia.ca.gov/-About_PIA/FastFacts.html 37

Brian J. Ostrom, *et al.*, *Congress, Courts & Corrections: An Empirical Perspective on the Prison Litigation Reform Act*, 78 Notre Dame L. Rev. 1525 (2003) 34

Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America's Jails & Prisons: The Case for Amending the Prison Litigation Reform Act*, 11 U. Pa. J. Const. L. 139 (2008) 40

Cal. Dep't of Corr. & Rehab., *Office of Victim & Survivor Rights & Services*, http://www.cdcr.ca.gov/victim_services/restitution_collections. html 52

Fed. Bureau of Prisons, Progr. Stmt. 8120.02 Work Programs for Inmates-FPI (July 15, 1999), http://www.bop.gov/policy/progstat/8120_002.pdf 37

Florence Federal Prison Camp Commissary List, http://www.bop.gov/ locations /institutions/ flm/FLX_CommList.pdf (last visited on Aug. 10, 2015) 47

Mich. Dep't of Corr., Family Information Packet, http//ww.michigan.gov/documents/corrections/Family_ Information_Packet_2013-01-15_408528_7.pdf 47

Nev. Dep't of Corr. Admin. Reg. 850.01(5)(A), http://www.doc.nv.gov/sites/doc/files/pdf/ar/AR850.PDF 47

Report of the State Auditor, *Inmate Restitution and Child Support: Performance Audit* (Mar. 2013), http://www.leg.state.co.us/OSA/coauditor1.nsf/All/70B1E72841FDC5A187256E280064A65A/$FILE/1477%20Inmate%20Restitution%20Perf%20FY03.pdf 52

S.D. Dep't of Corr., Frequent Questions, http://doc.sd.gov/about/faq/mail.aspx 47

State of Ala. Dep't of Corr. Admin. Reg. No. 703, *Inmate Co-Payment for Health Services* (June 1, 2013), http://www.doc.state.al.us/docs/AdminRegs/AR703.pdf 52

State of California Prison Industry Auth., Fast Facts, http://www.pia.ca.gov/About_PIA/FastFacts.html 37

State of Tenn., Dep't of Corr., *Administrative Policies and Procedures: Disciplinary Punishment Guidelines* (effective June 1, 2012), http://www.state.tn.us/correction/pdf/502-02.pdf 52

United States Courts, *Table S-23, Civil Pro Se And Non-Pro Se Filings, by District* (Sept. 30, 2010), http://www.uscourts.gov/statistics/table/c-13/judicial-business/2010/09/30 48

Utah Dep't Corr., How to Buy Books and Magazines for an Inmate, http://corrections.utah.gov/index.php?option=com_content&view=article&id=1048:how-to&catid=20& Itemid=164 47

Utah Dep't Corr., *Inmate Health Care, Q&A: Do Inmates Have Co-Pay Charges?*, http://corrections.utah.gov/index.php?option=com_content&view=article&id=1054:health-care &catid=20&Itemid=182 52

OPINIONS BELOW

The August 5, 2014 opinion of the U.S. Court of Appeals for the District of Columbia Circuit is published at 761 F.3d 1 (D.C. Cir. 2014). That opinion is reproduced in the Appendix to the Petition ("Pet. App.") at 1a-18a. The D.C. Circuit's orders denying rehearing and rehearing *en banc* are unpublished and are reproduced at Pet. App. 23a-25a.

JURISDICTION

Petitioner Antoine Bruce seeks review of the August 5, 2014 decision of the court of appeals denying his request to stay the collection of filing fees. A timely petition for rehearing and rehearing *en banc* was filed, which the court of appeals denied on October 22, 2014. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reprinted in the Appendix to this Brief.

STATEMENT

A provision of the Prison Litigation Reform Act ("PLRA"), codified at 28 U.S.C. § 1915(b)(2), requires a prisoner suing *in forma pauperis* ("IFP") – after paying an initial partial filing fee – to make monthly installment payments of 20% of the prisoner's monthly income until the filing fee is paid in full. An open and recurring question, deeply dividing the lower courts, is how those monthly installment payments are to be collected when an IFP prisoner owes filing fees for more than one case. Does § 1915(b)(2) permit a pris-

oner to make a single 20% payment each month, with the prisoner paying off each filing fee sequentially in the order in which it was incurred (known as the "per-prisoner" or "sequential" approach)? Or does the statute require the prisoner to make a separate 20% payment each month for each case filed, with the prisoner simultaneously making payments toward all of his existing obligations (known as the "per-case" or "simultaneous" approach)? The answer, upon consideration of the statute's text, structure, and purpose, canons of statutory construction, and administrative feasibility, is the per-prisoner, sequential approach.

A. The PLRA Statutory Framework

The federal IFP statute, in effect in one form or another since the late nineteenth century, and currently codified at 28 U.S.C. § 1915, generally permits courts to waive a filing fee for an indigent litigant seeking to commence a lawsuit or appeal. In 1996, Congress enacted the PLRA (Pub. L. No. 104-134, 110 Stat. 1321-66) and substantially amended § 1915 as it relates to indigent prisoners. In so doing, it hoped to reduce the volume of frivolous prisoner lawsuits, while at the same time ensuring that prisoners remained able to file meritorious claims. *See Jones v. Bock*, 549 U.S. 199, 203-04 (2007); *see also infra* pp. 35-36. The PLRA provisions most relevant to this case fall into four categories: (1) a requirement for payment of an initial partial filing fee; (2) an installment-payment requirement for satisfaction of the remainder of the filing fee and of any costs awarded in the case; (3) tools to control specific abusive filers or filings; and (4) safety-valve provisions.

1. *Initial Partial Payment of Filing Fee*. With the PLRA, Congress revoked for indigent prisoners the forgiveness of federal filing fees enjoyed by all other indigent persons. Instead, indigent prisoners "shall be required to pay the full amount of the filing fee," albeit over time. 28 U.S.C. § 1915(b)(1). A first, partial payment comes at the time of the commencement of the case or docketing of an appeal. Section 1915(b)(1) states that, at the start of the "civil action or appeal," the court:

> shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—
>
> (A) the average monthly deposits to the prisoner's account; or
>
> (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Id. § 1915(b)(1)(A)-(B).

Immediate payment of this initial partial filing fee is excused in one circumstance: when the greater of the amounts calculated under (A) or (B) is zero. Congress authorized the filing of the suit or appeal in that situation when it provided elsewhere that "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." *Id.* § 1915(b)(4).

2. *Monthly Installment Payments*. After payment of the initial partial filing fee, Congress required IFP prisoners to pay the remainder through monthly installment payments. Section 1915(b)(2), which is at the center of the question presented, provides:

> After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

Id. § 1915(b)(2).

The statute then ties the payment of any costs taxed to the prisoner at the close of the action or appeal to the methodology adopted in § 1915(b)(2). A prisoner losing the case or appeal "shall be required to pay the full amount of the costs ordered," and he "shall be required to make payments for costs . . in the same manner as is provided for filing fees under subsection (a)(2) [sic: (b)(2)]." *Id.* § 1915(f)(2)(A)-(B).[1]

---

[1] Though § 1915(f)(2)(B) refers to "subsection (a)(2)," numerous courts have recognized that "Subsection (f)(2)(B)'s reference to subsection (a)(2) is a scrivener's error as the reference should be to subsection (b)(2)." *Johnson v. McNeil*, 217 F.3d 298, 300 (5th Cir. 2000); *accord Talley-Bey v. Knebl*, 168 F.3d 884, 886-87 (6th Cir. 1999). In fact, subsection (a)(2) in § 1915 does not deal with payment methodologies at all, but with evidence a prisoner must submit to substantiate IFP status. *See* 28 U.S.C. § 1915(a)(2) (prisoner "shall submit a certified copy of the trust fund account statement . . ").

3. *Controls for Specific Abusive Filings and Filers.* Section 1915 contains tools to be used in individual instances to deal with abusive filings and abusive filers. In a command applicable to both indigent non-prisoners and prisoners, the statute requires courts to "dismiss the case at any time if [it] determines that the action or appeal is (i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). Another provision, also operative for non-prisoners and prisoners, states that an "appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." *Id.* § 1915(a)(3).

With respect to abusive prisoner-filers, the PLRA created the so-called "three-strikes" rule. *See id.* § 1915(g). Under this provision, a court may not afford IFP status to a prisoner who "has, on 3 or more prior occasions, while incarcerated . . . , brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." *Id.*; *see Coleman v. Tollefson*, 135 S. Ct. 1759, 1762 (2015). The three-strikes provision includes an exception, allowing IFP status if "the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).[2]

---

[2] Though not contained in § 1915, an invigorated administrative exhaustion requirement, codified at 42 U.S.C. § 1997e, was adopted in the PLRA that seeks, in a more general manner, to screen out non-meritorious prisoner suits. *See Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (describing the PLRA's exhaustion requirement as a "centerpiece" of the PLRA's effort to reduce the volume of prisoner

4. *Safety-Valve Provisions*. Several measures in the PLRA – some already mentioned – seek to ensure that its other provisions do not impede a prisoner's right of access to the courts or otherwise engender overly harsh results. As noted, the statute does not preclude the filing of a lawsuit even if the prisoner has no funds to pay the initial partial filing fee. *See* 28 U.S.C. § 1915(b)(4). With respect to the monthly installments for filings fees and costs, the obligation to make payments is triggered only if the amount in the prisoner's account exceeds $10.00. *See id.* § 1915(b)(2). And the three-strikes rule contains the aforementioned safety-valve for prisoners who face imminent danger of serious physical harm. *See id.* § 1915(g).

Still other provisions prohibit the enhancement of fees for prisoners over non-prisoners: "In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment." *Id.* § 1915(b)(3). Similarly, "[i]n no event shall

---

litigation). Under the PLRA's exhaustion requirement, a prisoner may not bring any action "with respect to prison conditions" under 42 U.S.C. § 1983 "or any other Federal law" until "such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Another PLRA screening measure mandates that federal courts review, upon filing, a prisoner "complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity" and "dismiss the complaint, or any portion of the complaint, if the complaint . . . is frivolous, malicious, or fails to state a claim upon which relief may be granted . . . or . . . seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(a)-(b).

the costs collected exceed the amount of the costs ordered by the court." *Id.* § 1915(f)(2)(C).

B. Proceedings Below

Petitioner is prisoner Antoine Bruce, currently serving a fifteen-year sentence and incarcerated at the U.S. Penitentiary, Administrative Maximum Facility in Florence, Colorado. *See* Respondents' Br. in Resp. to Pet. for Cert. ("Resps. Cert. Br.") at 16; Bur. of Prisons, *Inmate Locator*, http://www.bop.gov.inmateloc (last visited Aug. 10, 2015) (BOP Register No. 35363-007). But the proceedings below actually commenced with the filing of a lawsuit by another federal prisoner, Jeremy Pinson, litigation that Bruce attempted to join as a co-plaintiff.

In 2009, Pinson filed suit in the U.S. District Court for the District of Columbia, challenging as unconstitutional the conditions of his confinement at the Federal Correctional Institution in Talladega, Alabama, where both he and Bruce were incarcerated at the time. *See* Pet. App. 2a. Pinson named as defendants various Bureau of Prison ("BOP") officials. Pinson challenged the BOP's guidelines and actions associated with the creation of "Special Management Units," or "SMUs." "SMUs house gang-affiliated and other disruptive inmates who present unique security concerns." Pet. App. 3a (citing BOP Program Statement 5217.01 (Nov. 19, 2008)). Pinson alleged that the guidelines were illegal because they did not contain adequate safeguards to ensure that rival gang members were not placed in the same SMU; he further maintained that the defendant BOP officials had, in fact, placed him in imminent danger by housing him with rival gang members. Joint Appendix ("J.A.") at 24-26.

In January 2010, immediately after docketing Pinson's complaint, the district court ruled that venue was improper in the District of Columbia and transferred the case to the Northern District of Alabama. J.A. 29-30. The transfer order was signed on January 19, 2010, and entered in the docket on January 21, 2010. According to Pinson, on or about January 11, 2010 (therefore, before the transfer order), and then again on January 22, 2010, he and several other prisoners – including Bruce – sought to file a "Motion For Leave to Join and Amend." J.A. 60-61. On both occasions, the district court, Pinson alleged, returned the motions to Pinson, and the motions were not entered on the district court's docket. *Id.*

In the district court, Pinson moved to proceed IFP. Pet. App. 3a. But the district court stated that Pinson's IFP application should be decided by the transferee court. *Id.*

Pinson then, after unsuccessfully moving for reconsideration in the district court of the venue transfer, filed a notice of appeal contesting the transfer order. J.A. 34. The D.C. Circuit treated the notice of appeal as a mandamus petition. J.A. 35. Pinson and other federal prisoners, including Bruce, then filed an "Amended Notice of Appeal" in the district court, which the court of appeals treated as a supplement to the mandamus petition. J.A. 63-65, 68-69.

In the court of appeals, Pinson and Bruce (and others) moved to proceed IFP pursuant to § 1915(b). J.A. 37-57, 80-105. Pinson also moved "to stay any collection of filing fees until he completed payment of filing fees owed in other cases he had brought." Pet.

App. 4a. Later, Bruce joined Pinson's motion to stay the collection of filing fees. *Id.* at 5a; J.A. 106.

In the decision on review here, the D.C. Circuit first denied Pinson's IFP application. It was "undisputed that Pinson had accumulated three strikes," and the D.C. Circuit found that Pinson failed to meet the three-strike rule's exception for imminent danger of serious physical injury. Pet. App. 6a. The court of appeals, however, did provide Pinson time to pay his portion of the filing fee for the mandamus petition up front if he chose to proceed with the mandamus petition. *Id.* at 8a.

The court of appeals then granted IFP status to Bruce, who had "not accumulated three strikes." *Id.*[3] The court, however, held that Bruce lacked standing to challenge the district court's transfer of the underlying case to the Northern District of Alabama. *Id.* at 9a-10a.

The D.C. Circuit next addressed the manner in which filing fees should be collected from Bruce (an issue that was moot as to Pinson in light of the court of appeals's conclusion that he could not proceed IFP). *Id.* at 11a-18a. The court of appeals began by delineat-

---

[3] Respondents do not dispute the court of appeals's finding that Bruce lacks three strikes. *See* Resps.' Cert. Br. at 15 n.7. As also noted by Respondents, Bruce has filed several federal cases. *See id.* (citing *Bruce v. Alvarez*, No. 1:14-CV-03232 (D. Colo. filed Nov. 26, 2014); *Bruce v. Wilson*, No. 1:13-CV-00491 (D. Colo. filed Feb. 25, 2013); *Bruce v. Holbrook*, No. 1:10-CV-03287 (N.D. Ala. filed Nov. 29, 2010); *Bruce v. Chambers*, No. 3:10-CV-02256 (M.D. Pa. filed Nov. 1, 2010); *Bruce v. Reese*, No. 1:09-CV-02378 (N.D. Ala. filed Nov. 24, 2009)).

ing the difference between the per-prisoner and per-case approaches. "Under the 'per prisoner' cap, a prisoner would satisfy his obligations sequentially, first fully satisfying his obligation for his earliest case before moving on to the next one, at no time making any payment that would take his cumulative payments for that month beyond an overarching twenty-percent ceiling." *Id.* at 12a-13a. The per-case approach "requires a prisoner to make a separate installment payment for *each* filing fee incurred as long as no *individual* payment exceeds twenty percent of his monthly income." *Id.* at 13a (emphasis added). "Under the 'per case' cap, a prisoner simultaneously makes payments towards satisfaction of all of his existing obligations," with potentially 100% of his monthly income being taken if there are five filing fees outstanding. *Id.*

From these two approaches, the court of appeals adopted the per-case approach, thus concluding that Bruce must pay his part of the filing fee associated with the mandamus petition simultaneously with previously incurred filing fees. *Id.* at 11a-18a. The court of appeals focused on the "overall statutory scheme" of § 1915, and said that, in its view, every provision of § 1915, including the 20% installment provision, "appl[ies] to *each action or appeal* filed by a prisoner." *Id.* at 14a (emphasis in original; internal quotation marks and citation omitted). The court of appeals especially focused on what it saw as a tie between subsections (b)(1) and (b)(2). It found that, "[b]ecause the initial partial filing fee imposed in subsection (b)(1) acts as the 'triggering condition' for the monthly installments required by subsection (b)(2), the two provisions should be read in tandem." *Id.* at 15a (quoting *Torres v. O'Quinn*, 612 F.3d 237, 256 (4th Cir.

2010) (Neimeyer, J., dissenting)). And "[g]iven that the initial fee required by subsection (b)(1) applies on a per-case basis, it follows that subsection (b)(2)'s monthly payment obligation likewise applies on a per-case basis." *Id.* The D.C. Circuit also reasoned that the per-case approach comports with the PLRA's underlying purpose, which it characterized as deterring prisoners from filing frivolous lawsuits. *Id.* at 17a.

The D.C. Circuit's adoption of the per-case approach tapped into a deep division among the circuits on how to interpret § 1915(b)(2)'s 20% installment-payment requirement. Four other circuits agree with the D.C. Circuit that the per-case approach applies. *See Atchison v. Collins*, 288 F.3d 177 (5th Cir. 2002); *Lefkowitz v. City-Equity Grp., Inc.*, 146 F.3d 609 (8th Cir. 1998); *Newlin v. Helman*, 123 F.3d 429 (7th Cir. 1997); *see also Christensen v. Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 F. App'x 821 (10th Cir. 2010). Three circuits have adopted the per-prisoner approach, holding that § 1915(b)(2) permits a prisoner to make a single 20% payment each month, with the prisoner paying off each filing fee sequentially in the order in which it was incurred. *See Siluk v. Merwin*, 783 F.3d 421 (3d Cir. 2015); *Torres v. O'Quinn*, 612 F.3d 237 (4th Cir. 2010); *Whitfield v. Scully*, 241 F.3d 264 (2d Cir. 2001).[4]

---

[4] The court of appeals's disposition of the IFP applications in this case touches on two other conflicts among the circuits regarding § 1915. The D.C. Circuit, like some, but not all, of its sister circuits, considers a mandamus petition to be a "civil action" or "appeal" to which the PLRA applies, and therefore applied § 1915(b)(2)'s installment-payment approach to Bruce's filing. *See In re Grant*, 635 F.3d 1227, 1230 (D.C. Cir. 2011); *accord In re*

SUMMARY OF ARGUMENT

I. In a case involving statutory construction, such as this one, the starting point is the statute's text. Here, the text points to the per-prisoner approach. The key sentence in § 1915(b)(2) states that the agency with custody of the prisoner shall forward the 20% monthly payments "to the clerk of the court [singular] each time the amount in the account exceeds $10 until the filing fees [plural] are paid." 28 U.S.C. § 1915(b)(2). Congress's use of the singular "clerk of the court," but the plural "filing fees," evinces that a single clerk's office is to receive monthly payments even when there are numerous "filing fees" owed, which is consistent with the per-prisoner approach but not the per-case approach. This Court last Term in *Coleman v. Tollefson*, 135 S. Ct. 1759 (2015), found Congress's use of a particular singular in the PLRA to inform the result when construing another of the PLRA's provisions, the three-strikes provision, 28 U.S.C. § 1915(g). No less than in *Coleman*, Congress's use here of singulars and plurals should be deemed deliberate and purposeful.

Stone, 118 F.3d 1032, 1034 (5th Cir. 1997); *Martin v. United States*, 96 F.3d 853, 854-55 (7th Cir. 1996); *In re Tyler*, 110 F.3d 528, 529 (8th Cir. 1997); *Green v. Nottingham*, 90 F.3d 415, 418 (10th Cir. 1996); *but see Madden v. Myers*, 102 F.3d 74, 78 (3d Cir. 1996); *In re Nagy*, 89 F.3d 115, 117 n.1 (2d Cir. 1996). Additionally, Respondents noted a conflict among the circuits on whether, under the PLRA, IFP prisoners joining collectively in a single action must each pay the full filing fee or whether, alternatively, they proportionately share a single filing fee (as the D.C. Circuit found here). *See* Resps.' Cert. Br. at 7 n.2 (citing conflicting decisions). Neither side has sought review of these other circuit-splitting issues.

II. The PLRA's structure and the statutory context confirm that Congress intended the per-prisoner approach. *First*, had Congress contemplated the per-case approach, it would have been clear about it, but courts to have addressed the issue agree that the statute on its face does not expressly adopt the per-case approach. Clarity on the face of § 1915(b)(2) would be expected because the supposed advantage of the per-case approach is to better deter prisoners from filing frivolous cases; yet, if the statute gives no clear warning of the consequence of filing, no deterrence can occur.

Second, it makes no sense to think that Congress expected the per-case approach when it nowhere provided guidance as to what happens once the fifth filing fee is incurred. At that point, under the per-case approach, 100% of the prisoner's income will be taken, and a whole slew of perplexing questions arises as to what occurs next.

Third, the per-case approach is difficult to harmonize with the PLRA's costs provision, which says that costs may be awarded against a prisoner "in the same manner" as for filing fees under § 1915(b)(2). 28 U.S.C. § 1915(f)(2)(B). Once a prisoner hits five filing fees, all of her previous month's income will be garnished under the per-prisoner approach, leaving nothing for costs, notwithstanding that costs are to be treated the same as filing fees.

Fourth, the per-prisoner approach follows from the direction in § 1915(b)(2) that no 20% installment payment shall occur if the prisoner lacks $10 in his account. The reason for that threshold is so that the prisoner may at least have some measure of funds for minimal amenities. Illogically, the per-case approach

would take potentially 100% of the prisoner's income once $10 is surpassed, even though the very reason for the $10 threshold is to leave the prisoner a minimal monetary cushion.

Fifth, the contextual reason cited by courts to have adopted the per-case approach – namely, that § 1915(b)(2) is inextricably bound to § 1915(b)(1), which operates on a per-case basis – is unpersuasive. Subsection (b)(2) is incongruous with subsection (b)(1), because it uses a different payment methodology, a different collection official, and refers to "filing fees" not "filing fee."

III. The per-prisoner approach is more compatible with the PLRA's statutory purposes. The goal of the PLRA was not to deter frivolous prisoner lawsuits at all cost, but to curb frivolous prisoner cases while also ensuring that prisoners could still bring meritorious claims. By creating the prospect of taking a fixed 20% of a prisoner's income each month and placing new filing fees and costs incurred in line to be paid over a progressively increasing period of time, the per-prisoner approach makes the prisoner think twice before filing a potentially frivolous action, but does not threaten such a significant sting as to thwart meritorious claims from being brought. In contrast, the per-case approach's threat of possibly 100% of monthly income being at risk eventually due to filing fees and costs is a draconian penalty more likely to prevent the filing of even meritorious cases. Additionally, the added measure of deterrence ascribed to the per-case approach is unnecessary given the success of the PLRA's other tools for limiting frivolous prisoner lawsuits.

IV The per-prisoner approach follows from the canon of statutory construction whereby the Court seeks to avoid constitutional questions. The per-case approach implicates the constitutional right of access to the courts to raise claims involving fundamental rights, a constitutional right that prisoners, like everyone else, enjoy. Under the per-case approach, the prisoner is subject potentially to a 100% recoupment of his income each month, leaving nothing for incidentals like phone calls to family members, postage, or reading materials. Faced with the choice of bringing a legal claim involving a fundamental right, or purchasing amenities to make prison life more bearable, the prisoner may be relegated to choosing the latter. As a result, if § 1915(b)(2) is read to require such choosing – which it would, if the per-case approach applies – it impermissibly may chill the right of access to the courts. Because the per-prisoner approach is an alternative construction of § 1915(b)(2) that avoids the constitutional problem, the Court should choose it.

V. Congress likely intended the per-prisoner approach because it is more feasible administratively. The per-case approach sets up absurd situations where prison officials are required to divide five ways, and send to five different court clerks, miniscule amounts – amounts that might be less than the postage stamp necessary to send the payment to the clerk. Furthermore, the per-case approach is more complicated than the per-prisoner approach because, once a sixth filing fee or costs award exists, it encompasses the per-case approach for the first five filing fees or costs, and then a sequential methodology like the per-prisoner approach for the sixth and upward filing fees and costs. And the per-case approach visits administrative diffi-

culties on state prison officials in particular, who in addition to navigating the complexities and absurdities presented by the per-case approach for federal filing fees and costs may additionally have to manage collections for state filing fees and other deductions state laws impose on prisoners.

ARGUMENT

I. THE PLRA'S TEXT REQUIRES THE PER-PRISONER APPROACH

Because the petition presents a question of statutory interpretation, the analysis "start[s], of course, with the statutory text." *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006); *accord Sebelius v. Cloer*, 133 S. Ct. 1886, 1893 (2013). And "[u]nless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning." *BP Am.*, 549 U.S. at 91. Here, the text points to the per-prisoner, sequential approach for the payment of the 20% monthly installments on multiple outstanding filing fees. Indeed, adoption of the per-case approach would require that a particular term in § 1915(b)(2) stated in the singular be read against its ordinary meaning as a plural, or that a term in the plural be read as a singular.

To recap, § 1915 as it relates to prisoners begins by requiring any prisoner who brings a civil action or appeal IFP to pay, when commencing the action or appeal, an initial partial filing fee. This initial partial filing fee is assessed and collected by the court in which the civil action or appeal is brought. *See* 28 U.S.C. § 1915(b)(1) (the "court shall assess and, when funds exist, collect an initial partial filing fee").

There is no dispute among the parties that "the initial partial filing fee accrues in each case, regardless of the number of suits initiated." Pet. App. 15a.

After the initial partial filing fee is collected by the court, however, the next provision – § 1915(b)(2) – governs how the remainder of a prisoner's filing-fee obligations will be paid. Section 1915(b)(2) provides that, "[a]fter payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding monthly's income credited to the prisoner's account." 28 U.S.C. § 1915(b)(2). The key provision of the statute then provides: "The agency having custody of the prisoner shall forward payments from the prisoner's account *to the clerk of the court* [singular], each time the amount in the account exceeds $10 until *the filing fees* [plural] are paid." *Id.* (emphasis added).

The use of the singular words "clerk" and "court," but the plural "filing fees," indicates that a single clerk s office is to receive monthly payments even when there are numerous "filing fees" outstanding, a position consistent with the per-prisoner methodology of paying one court at a time (but sequentially) when there are filing fees outstanding from several courts. In contrast, if Congress had intended for prisoners with multiple filing fees to pay the filing fees simultaneously, it would have directed the prisoner's custodian to forward payments to *each* clerk of the court to which filings fees are owed, not to a single "clerk of the court" when "filing fees" are owed. Or Congress could have left its hand untipped as to one approach or the other, by putting both "clerk of the court" and "filing fee" in the singular in § 1915(b)(2). It

chose neither of these latter paths, instead opting to state that a single "clerk of the court" gets paid, even when there remains more than one filing fee – thus, "filing fees' – owed.

It is fair to give these terms their ordinary meanings – that is, "clerk of the court" meaning one entity, and "filing fees" meaning more than one. Congress was attuned to the importance of distinguishing between singulars and plurals in the statute. In § 1915(b)(1), identifying the prisoner's obligation each time a civil action or appeal is filed, the statute refers to a singular filing fee. *See id.* § 1915(b)(1) ("the prisoner shall be required to pay the full amount of a filing fee"); *id.* (the "court shall assess and, when funds exist, collect an initial partial filing fee"). Yet, when authorizing the prison custodian's monthly withdrawal from the prisoner's account, payments are to be made until the "filing fees" are paid. Moreover, Congress plainly understood that a prisoner may owe multiple filing fees, for the entire purpose of the PLRA is to provide rules for prisoners who file multiple lawsuits (including the three-strikes provision, *id.* § 1915(g)), making the use of the plural "filing fees" seem knowing and purposeful. Finally, § 1915(b)(2) appears to be a carefully written measure, including specifics like "clerk of the court" (not just "court" as in § 1915(b)(1)), "the agency having custody of the prisoner" (as the collecting official), and a special $10-rule for triggering monthly payments. Consistent with this detail, the provision's singulars and plurals should not be ignored.

Earlier this year, the Third Circuit read § 1915(b)(2) in a similar manner. As it explained,

"[n]othing in subsection (b)(2)'s language, requiring monthly payments to 'the clerk of the court, until the filing fees are paid[,]' suggests that Congress intended that 'the clerk' simultaneously refer to two different clerks in two different courts." *Siluk v. Merwin*, 783 F.3d 421, 429 (3d Cir. 2015). "Congress could certainly have required monthly payments to multiple clerks of different courts, or the same clerk for multiple filings until each filing fee is paid. Congress did not use language that would have achieved that result." *Id.*

This Court's decision just last Term in *Coleman v. Tollefson*, 135 S. Ct. 1759 (2015), likewise confirms that the singulars and plurals in the PLRA can be determinative. There, in considering whether § 1915(g)'s three-strikes rule allows for the issuance of a strike from a district court filing while the district court's decision remains subject to appeal, the Court insisted on a "literal reading" of § 1915. *Id.* at 1764. At one point in its opinion, the Court focused on the fact that the three-strikes rule, in assessing a strike, "refers to whether an action or appeal 'was dismissed.'" *Id.* at 1763 (quoting 28 U.S.C. § 1915(g)). The Court then said that "§ 1915 itself describes dismissal as an action taken by a *single* court, not as a sequence of events involving multiple courts." *Id.* (emphasis added). In this regard, the Court emphasized the following instruction in § 1915(e)(2): "*[T]he court* shall dismiss the case at any time if *the court* determines that – (A) the allegation of poverty is untrue; or (B) the action or appeal – (i) is frivolous or malicious; [or] (ii) fails to state a claim on which relief may be granted." *Id.* (emphasis in original). Just as Congress's choice of singular or plural in § 1915(e)(2) signaled the result in

Coleman, so too its use of the singular "clerk of the court" and plural "filing fees" makes the difference here: it shows that – as is compatible only with the per-prisoner approach – a single "clerk of the court" receives the 20% payment when there are multiple "filing fees" outstanding.

Courts of appeals interpreting the PLRA to favor the per-case, simultaneous approach have not held that the text of § 1915(b)(2) – standing alone – compels that approach. *See, e.g., Christensen v. Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 F. App'x. 821, 829 (10th Cir. 2010) ("[t]he pertinent language of § 1915(b)(2), considered in isolation, does not provide a clear directive regarding application of the twenty-percent limitation"); *Newlin v. Helman*, 123 F.3d 429, 436 (7th Cir. 1997) ("the statute does not tell us whether the 20 percent-of-income payment is per case or per prisoner"). Instead, circuits adopting the per-case approach have relied, sometimes exclusively, on statutory purpose arguments (*Lefkowitz v. City-Equity Grp., Inc.*, 146 F.3d 609, 612 (8th Cir. 1998); *Newlin*, 123 F.3d at 436), or, in addition to invoking the statutory purpose, have treated § 1915(b)(1)'s requirement regarding the initial partial filing fee on a per-case basis as controlling. *See Christensen*, 374 F. App'x at 830-31; *Atchison v. Collins*, 288 F.3d 177, 180-81 (5th Cir. 2002); Pet. App. 14a-16. But the text comes first, and here it supports the per-prisoner approach.

Respondents' only response to the textual argument so far has been to say that, in "assum[ing] the term 'fees' must refer to multiple cases, [Petitioner] overlooks the fact that several different types of fees can apply in a single case." Resps. Cert. Br. at 9 n.3.

Hence, Respondents apparently believe that Congress, in § 1915(b)(2), was not referring to a single court receiving the 20% payment when there are filing fees owed for the commencement of multiple cases, but to a single court receiving a 20% payment to cover all of the various fees supposedly owed when starting a case, which is a reading of the text that would not be incompatible with the per-case approach.

However, Respondents' argument cannot get past other text in the statute. Other subsections show that Congress bundled – definitionally, in effect – *all* fees owed at the start of a case into the term "filing fee." For instance, § 1915(b)(1) states that the court in which a case is filed shall "collect, as a partial payment of *any* court fees required by law, an initial partial *filing fee*" under the methodology that then follows. 28 U.S.C. § 1915(b)(1) (emphasis added). Similarly, the subsection prohibiting enhancement of the filing fee for indigent prisoners provides that "the *filing fee* collected [shall not] exceed the amount of *fees* permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment." *Id.* § 1915(b)(3). Accordingly, with all fees at the start of the case constituting a single "filing fee," Congress could not have meant the plural "filing fees" in § 1915(b)(2) to mean a single case's filing fee plus any other start-up fees associated with the case, but had to have intended the filing fees associated with more than one case.

II. THE STATUTORY CONTEXT CONFIRMS THAT CONGRESS INTENDED THE PER-PRISONER APPROACH

In a statutory-construction case, it is, of course, also appropriate to "turn to the broader structure of the Act to determine the meaning" of relevant terms. *King v. Burwell*, 135 S. Ct. 2480, 192 L. Ed. 2d 483, 498 (2015). "[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989). The context can help "decid[e] whether the [statutory] language is plain." *King v. Burwell*, 192 L. Ed. 2d at 494. Here, the statutory context in which § 1915(b)(2) appears confirms what § 1915(b)(2)'s text instructs: the per-prisoner, sequential approach. In fact, in determining whether the per-prisoner or per-case approach should govern, what is missing from the statute's structure is as telling as what is there.

A. If Congress had wished to impose the per-case approach, it seems likely – in light of the purpose the per-case approach supposedly furthers – that Congress would have done so explicitly. Courts adopting the per-case approach are adamant, as the D.C. Circuit was here, that simultaneous payment of multiple filing fees is necessary "'to deter prisoners from filing frivolous lawsuits which waste judicial resources and compromise the quality of justice enjoyed by the law-abiding population.'" Pet. App. 17a (quoting *In re Kissi*, 652 F.3d 39, 41 (D.C. Cir. 2011)); *see also Newlin v. Helman*, 123 F.3d 429, 436 (7th Cir. 1997). "Capping monthly withdrawals at twenty percent of an inmate's income, regardless of the number of suits

filed, would diminish the deterrent effect of the PLRA once a prisoner files his first action." Pet. App. 17a. While we discuss at greater length later the PLRA's purposes and how the per-prisoner approach better comports with the statute's objectives, it is enough for argument's sake to assume for the moment that the PLRA's object was to deter, in the strongest way possible, prisoners from filing frivolous lawsuits.

But deterrence at the amplified level envisioned by courts subscribing to the per-case approach could only occur if a prisoner had clear warning that each additional case or appeal would take an additional 20% from the prisoner's monthly income. In other words, Congress would need to have used words plainly to impart to the prisoner that the filing of one case leads to a loss of 20% of monthly income, the filing of two to 40%, and the filing of five or more to 100%, if it wanted such ever-increasing monthly garnishments to make the prisoner "'think twice'" before filing the next lawsuit. *Tucker v. Branker*, 142 F.3d 1294, 1296 (D.C. Cir. 1998) (quoting 141 Cong. Rec. S7,526 (daily ed. May 25, 1995) (statement of Senator Kyl)). Yet, as noted, one thing about which the circuits largely agree regarding § 1915(b)(2) is that the text of the provision does *not* on its face instruct the per-case approach. *See supra* p. 20. What is worse, even after considering all manner of textual, contextual, and policy arguments, the courts of appeals are in deep conflict on the right reading of § 1915(b)(2).

Given the absence of clarity in the statute as to the per-case approach, § 1915(b)(2) can be viewed in one of two ways: either Congress intended to warn prisoners that they face 100% recoupment, and it did so by using

language that could not be deciphered by several federal appellate courts; or Congress intended to warn prisoners that they face the prospect of losing exactly what the statute says – "20 percent of the preceding month's income." 28 U.S.C. § 1915(b)(2). The latter option ascribes "rational" action to Congress, which is the preferred course. *Dan's City Used Cars, Inc. v. Pelkey*, 133 S. Ct. 1769, 1781 (2013).

B. It also makes little sense to believe that Congress would have implemented a simultaneous collection regime without addressing the most obvious question raised by that approach, which is: what happens when a prisoner who owes five filing fees (and therefore has 100% of his income withheld) files another lawsuit? As evidenced by the three-strikes provision in § 1915(g), Congress contemplated that some prisoners would file numerous lawsuits. And if Congress had envisioned an additional 20% of a prisoner's income being taken monthly for each filing fee owed, it would have occurred to Congress that such an approach would run its course by the time of the fifth filing.

Had Congress planned on allowing prisoner monthly payments to climb to 100%, it would have offered some explanation as to what would happen next. Does the per-case approach then revert to the per-prisoner approach, meaning that the sixth filing fee and upward are subject to sequential payment and replace one of the first five filing fees in the mix only after one of the first five is fully paid? As it is, the statute is silent on that point, likely because Congress never planned on withholding more than 20% of any prisoner's income. Again, the statutory structure – in

particular, a missing instruction otherwise necessary to implement a workable per-case approach – points to the per-prisoner approach.[5]

C. The per-case approach is difficult to harmonize with § 1915(f). Under that subsection, a court may, where appropriate, render a judgment for costs against the prisoner. Section 1915(f)(2)(B) states that "[t]he prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection[(b)](2)." 28 U.S.C. § 1915(f)(2)(B). If Congress had envisioned 100% of some prisoners' incomes being withheld for the payment of filing fees, as is the situation under the per-case approach when five or more filing fees exist, then there would be no room for the payment of costs. The agency with custody of the prisoner would need to decide whether filing fees take precedence over costs,

---

[5] One circuit adopting the per-case approach has suggested that "[f]ive suits or appeals mean that the prisoner's entire monthly income must be turned over to the court until the fees have been paid – though by then a prisoner is likely to have three strikes and to owe all future filing fees in full, in advance." *Newlin*, 123 F.3d at 436. But it is not credible to attribute the failure in the statute to address what happens to the sixth filing fee under the per-case approach to a Congressional vision that prisoners who file more than five cases inevitably will have accumulated three strikes. It is not unreasonable to think a prisoner serving a lengthy sentence may legitimately, over the course of serving the sentence, file five or more civil actions or appeals to challenge the conditions of his confinement or other prison-related matters. *See also infra* p. 30 (noting how the commencement of a single complaint can lead to numerous filing fees, when appeals are included). In fact, Respondents concede that Bruce has filed more than five cases (including this one) and have not contended that he has three strikes. *See supra* p. 9 n.3.

such that filing fees must always be paid off first, or whether an additional 20% of income must be put toward each filing fee and each costs award in the order in which that payment obligation was incurred. While the latter approach may be slightly more logical, it presents its own complexities under the per-case approach. Some prisoners will end up paying odd combinations of fees and costs – such as three fees and two costs, or two fees and three costs (raising the question as to whether they are then being collected "in the same manner"). And because an award for costs can be large, and therefore take much longer to pay off than a filing fee, some prisoners may end up paying toward four or five costs while later-in-time filing fees await payment.

It seems highly unlikely that Congress enacted a system with each of those possible outcomes, all without uttering a word about them in the statute. And in any event, given the various scenarios regarding filing fees and costs under the per-case approach, it appears impossible, under the per-case approach, to treat filing fees and costs "in the same manner," which is what § 1915(f)(2)(B) requires. On the other hand, the treatment of filing fees and costs under the per-prisoner approach is obvious and administratively simple. Twenty percent of the prisoner's income goes toward filing fees, and another 20% goes toward costs. When the prisoner has multiple obligations of either sort, they are paid off sequentially – Filing Fee #2 following Filing Fee #1, and Cost #2 following Cost #1.[6]

---

[6] This is exactly the approach to filing fees and costs adopted by the Second Circuit, a per-prisoner circuit. *See Whitfield v. Scully*, 241 F.3d 264, 277-78 (2d Cir. 2001).

D. The per-prisoner approach is supported by § 1915(b)(2)'s requirement that payments be collected only when "the amount in the [prisoner's] account exceeds $10." 28 U.S.C. § 1915(b)(2). Conversely, one of the principal flaws of the per-case approach is that it would undercut the function of this $10-clause. To see why, it is important to understand how the $10-rule, properly applied, functions in practice.

Under § 1915(b)(2), if a prisoner's account never reaches $10.01 or more in a given month, that prisoner makes no installment payments. *See Murray v. Dosal*, 150 F.3d 814, 818 (8th Cir. 1998) ("[P]ayments are extracted only in the months when the prisoner's trust fund account exceeds ten dollars"); *Chachere v. Barerra*, 135 F.3d 950, 951 (5th Cir. 1998) (acknowledging that "the account balance must exceed $10 before a deduction may be made."); *Hampton v. Hobbs*, 106 F.3d 1281, 1284-85 (6th Cir. 1997) ("If the prisoner has less than ten dollars ($10) in his account, no payment is required for that month."); *Shabazz v. Parsons*, 127 F.3d 1246, 1248 (10th Cir. 1997) (same).

Once the amount in a prisoner's account exceeds $10, the prison may deduct the required installment payment even if the result is that the prisoner's account is reduced to less than $10. Consider a prisoner who has one cent in his account and then earns $10.00 in a given month, such that he has $10.01 at the time his installment payment (for a single case) comes due the next month. The prison will withdraw $2 (20% of the preceding month's income) and forward it to the clerk of the court, leaving the prisoner with $8.01 in his account. The courts of appeals are in agreement that this is the correct reading of the $10-provision.

See McGore v. Wrigglesworth, 114 F.3d 601, 606-07 (6th Cir. 1997) ("No violation of the statute occurs if the application of the twenty-percent rule reduces the balance of the account below ten dollars. So long as the balance of the account is above ten dollars when the withdrawal is made, the requirements of § 1915(b)(2) are satisfied."); *see also Siluk v. Merwin*, 783 F.3d 421, 426 (3d Cir. 2015) (finding that deduction may be made below the $10-mark "if an inmate had $10 in his or her account on the first of the month"); *Torres v. O'Quinn*, 612 F.3d 237, 246 (4th Cir. 2010) (same); *Johnson v. McNeil*, 217 F.3d 298, 302 (5th Cir. 2000) ("It is of no consequence that [installment payment] deductions might cause the account balance to drop below $10.").

The obvious function of the $10-threshold is to ensure that prisoners will have at least a small amount of discretionary income after deductions for filing fees and costs. Indeed, there is no other purpose that the threshold could have been intended to serve. It does not make administration of the PLRA easier than it otherwise would be. The simpler approach would be to allow the agency with custody of the prisoner to deduct 20% of the prisoner's income from the preceding month, no matter what the circumstances. Instead, § 1915(b)(2) requires prisons to monitor their prisoners' accounts and make deductions during certain months but not others. Hence, the objective of the $10-provision, as several courts of appeals have expressed, is to "ensure that prisoners [who file lawsuits] need not totally deprive themselves of those small amenities of life which they are permitted to acquire in a prison . . . beyond the food, clothing, and lodging already furnished by the state." *Roller v. Gunn*, 107 F.3d 227, 233

(4th Cir. 1997) (internal quotation marks and citations omitted); *accord Shabazz*, 127 F.3d at 1248.[7]

When § 1915(b)(2) is viewed as a whole, one sees that the installment-payment provision and the $10-provision can be read to function harmoniously under the per-prisoner approach, but not under the per-case approach. In a per-prisoner regime, prisoners will always have at least $6.01 to spend on minor incidentals after making their installment payment, because an indigent prisoner will not have to make installment payments until he has at least $10.01 in his account, and the most that could then be deducted would be $4. Specifically, the prison could deduct $2 (20% of the prisoner's assets, assuming he earned all $10.01 during the preceding month) to be paid toward filing fees under § 1915(b)(2), and, if the prisoner owed costs, another $2 (*i.e.*, another 20%) under § 1915(f)(2)(B). After the payments, the prisoner would be left with $6.01 to spend on phone calls, stamps, and other items of his choosing.

Under the per-case approach, the purpose of the $10-provision is undermined. If the same prisoner from the previous example owed multiple filing fees and costs, his account would be reduced below $6.01,

---

[7] The $10-provision cannot be explained as an effort simply to avoid administrative inconvenience for those calculating and collecting the 20% installment payments when the prisoner's income is exceedingly low. If that were Congress's intent – namely, "don't bother when the administrative work is not worth what is to be collected" – then Congress would have included a similar minimum threshold in § 1915(b)(1) for triggering collection of the initial partial filing fee. No minimum threshold at all exists under § 1915(b)(1).

and if he owed five or more filing fees and costs (collectively), his account would be reduced to zero, leaving him no discretionary income whatsoever. Even the most prudent, non-litigious prisoners could quickly find themselves with 100% of their incomes withheld. As the Second Circuit explained, a *single* case can lead to this result. *See Whitfield v. Scully*, 241 F.3d 264, 276 (2d Cir. 2001) ("In the present case . . Whitfield's filing fees for the initial complaint and two appeals, plus the two awards of costs against him, could create five encumbrances subject to recoupment at a total rate of 100 percent."). But the existence of the $10-rule shows Congress wanted prisoners to be left with some discretionary income after making PLRA installment payments.

Just as damaging to Respondents' cause, the $10-provision of § 1915(b)(2) becomes, in another sense, virtually superfluous under the per-case approach. In a per-case system, prisons must monitor prisoner accounts and wait until the accounts rise above $10, only to then (in many cases) completely drain the accounts. Congress would have saved prisons this meaningless exercise by simply allowing them to make deductions every month, no matter the amount in the prisoners' accounts.

In contrast, the procedure required by the $10-provision *always* serves a meaningful purpose under the per-prisoner approach. In a per-prisoner regime, prisons wait for the prisoner's account to grow a modest amount (to $10) so that, when the deductions are made (20% of income for fees or 40% for fees and costs), the prisoner is left with some money to spend at his discretion. The better interpretation of § 1915(b)(2)

is that Congress had an objective when it joined the 20%-provision and the $10-provision in the same subsection, as is the case under the per-prisoner, sequen- sequential approach.

E. Nor does the chief contextual argument accepted by the circuits adopting the per-case approach, including the D.C. Circuit here, withstand careful scrutiny. The D.C. Circuit thought subsections (b)(1) and (b)(2) needed to be read "in tandem" because they were "immediately" next to one another and because "the initial partial filing fee imposed in subsection (b)(1) acts as the triggering condition for the monthly installments required by subsection (b)(2)." Pet. App. 15a (internal quotation marks omitted). And because § 1915(b)(1) "applies on a per-case basis," so should – the reasoning goes – § 1915(b)(2). *Id.*; *accord Christensen v. Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 F. App'x 821, 830-31 (10th Cir. 2010); *Atchison v. Collins*, 288 F.3d 177, 180-81 (5th Cir. 2002).

These courts have erred "[b]y deeming § 1915(b)(2) 'simply' to 'latch on' to § 1915(b)(1)." *Torres v. O'Quinn*, 612 F.3d 237, 249 (4th Cir. 2010) (quoting dissent in case). In reality, there is, at best, limited congruity between subsections (b)(1) and (b)(2). True, they together establish the regime for the collection of a filing fee. But they use entirely different methodologies for determining their respective payments. Subsection (b)(1) calculates its 20% partial initial filing fee based on "the greater of the average monthly deposits to the prisoner's account" or "the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal." 28 U.S.C.

§ 1915(b)(1)(A)-(B). Subsection (b)(2)'s installment payments are 20% of "the preceding month's income credited to the prisoner's account." *Id.* § 1915(b)(2). In addition, the collector under subsection (b)(1) is "the court" (*id.* § 1915(b)(1)); the collector under subsection (b)(2) is "the agency having custody of the prisoner." *Id.* § 1915(b)(2). Subsection (b)(1) contains no $10 threshold, while subsection (b)(2) does. And, again, subsection (b)(1) speaks of only a "filing fee" (singular), whereas subsection (b)(2) references "filing fees" (plural). *Compare id.* § 1915(b)(1) *with id.* § 1915(b)(2). Under these circumstances, bonding subsection (b)(2) to (b)(1) "bespeaks the kind of mechanical statutory interpretation" that is "unsupported by genuine analysis." *Torres*, 612 F.3d at 248, 249.

The two provisions that should be read "in tandem" are not subsections (b)(1) and (b)(2), but subsections (b)(2) and the costs provision, § 1915(f)(2)(B). In the costs subsection, Congress explicitly said costs shall be collected "in the same manner" as filing fees under subsection (b)(2). 28 U.S.C. § 1915(f)(2)(B). Nevertheless, as shown, the per-case approach (unlike the per-prisoner approach) makes the collection of costs confusing and unruly once several filing fees are outstanding, hardly allowing for an obvious answer as to how both can be collected "in the same manner."

III. THE PER-PRISONER APPROACH BEST SERVES THE PLRA'S FULL OBJECTIVES

Next turning to the "purpose" of the PLRA as a guide to its construction, *see Dolan v. U.S. Postal Service*, 546 U.S. 481, 486 (2006), the per-prisoner approach once again proves to be the better alternative. The Court "'cannot interpret federal statutes to

negate their own stated purposes,'" *King v. Burwell*, 135 S. Ct. 2480, 192 L. Ed. 2d 483, 498 (2015) (quoting *N.Y. State Dep't of Social Servs. v. Dublino*, 413 U. S. 405, 419-420 (1973)), and here only the per-prisoner approach avoids violence to the PLRA's competing objectives – deterring frivolous prisoner lawsuits and encouraging meritorious ones. Moreover, the elevation of one of the PLRA's statutory goals, namely, the deterrence of frivolous prisoner lawsuits, over the other purposes – which is what the per-case approach seeks to do – is unnecessary in light of the statute's other ample tools for deterring frivolous prisoner actions and of evidence that the PLRA is already accomplishing its deterrence objective.

A. In the PLRA, Congress Sought to Strike a Balance Between Reducing Frivolous Prisoner Lawsuits and Preserving Prisoners' Capacity to File Meritorious Claims

Congress enacted the first IFP statute in 1892 "to ensure that indigent litigants have meaningful access to the federal courts." *Neitzke v. Williams*, 490 U.S. 319, 324 (1989); *see also* Act of July 20, 1892, ch. 209, 27 Stat. 252, 252 ("An act providing when plaintiff may sue as a poor person and when counsel shall be assigned by the court."). This legislation reflected Congress's concern that, while the wealthy were able to seek justice in the courts, the poor were being denied "entrance to them to have their rights adjudicated." H.R. Rep. No. 52-1079, at 1 (1892).

The resulting statute was broad. It provided that any citizen, upon filing the necessary written "statement under oath," could commence a lawsuit "without

being required to prepay fees or costs." Act of July 20, 1892, ch. 209, 27 Stat. at 252.

Codified principally at 28 U.S.C. § 1915(a), the current IFP statute contains the same forgiveness of filing fees and costs for non-prisoner indigents. Over time, however, Congress rolled back some of the original statute's breadth, recognizing "that a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Neitzke*, 490 U.S. at 324. To prevent "abusive" and "captious" litigation, *id.*, Congress amended the statute to authorize the courts to dismiss a claim filed IFP "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." 28 U.S.C. § 1915(d) (1995).

Prisoners originally enjoyed the same IFP rights as non-prisoner indigents. But a sharp increase in the number of incarcerated persons post-1960, and the related rise in prisoner lawsuits – most of which "ha[d] no merit," with "many [being] frivolous" (*Jones v. Bock*, 549 U.S. 199, 203 (2007)) – moved Congress eventually to revise the IFP rules for prisoners. *See* Brian J. Ostrom, *et al.*, *Congress, Courts & Corrections: An Empirical Perspective on the Prison Litigation Reform Act*, 78 Notre Dame L. Rev. 1525, 1531 (2003) ("Between 1972 and 1996, the number of state prisoner § 1983 lawsuits filed in U.S. district courts increased by 1153% while the state prison population increased by 517%."); *Coleman v. Tollefson*, 135 S. Ct. 1759, 1762 (2015) ("[A]s the years passed, Congress came to see that prisoner suits in particular represented a disproportionate share of federal filings.").

So came the PLRA. "Floor statements 'overwhelmingly suggested' that Congress sought to curtail suits qualifying as 'frivolous' because of their 'subject matter,' *e.g.*, suits over 'insufficient storage locker space,' 'a defective haircut,' or 'being served chunky peanut butter instead of the creamy variety.'" *Porter v. Nussle*, 534 U.S. 516, 522 (2002) (quoting *Nussle v. Willette*, 224 F.3d 95, 105 (2d Cir. 2000)). Thus, Congress implemented "a series of controls," *Skinner v. Switzer*, 562 U.S. 521, 535 (2011), in order "to deal with what was perceived as a disruptive tide of frivolous prisoner litigation." *Woodford v. Ngo*, 548 U.S. 81, 97 (2006).

The purpose of the PLRA, however, was not just to reduce the number of frivolous prisoner cases. The statute "also was intended to 'improve the quality'" of prisoner litigation. *Id.* at 93-94 (quoting *Nussle*, 534 U.S. at 524). Congress decided that the courts needed "fewer and better prisoner suits." *Jones*, 549 U.S. at 203. Our nation's judicial system "remains committed to guaranteeing that prisoner claims of illegal conduct by their custodians are fairly handled according to law." *Id.* And through the PLRA, Congress sought to "preserv[e] prisoners' capacity to file meritorious claims." *Woodford*, 548 U.S. at 117 (Stevens, J., dissenting); *see also* 141 Cong. Rec. S14,628 (daily ed. Sept. 29, 1995) ("If [a prisoner] ha[s] a meritorious lawsuit, of course they should be able to file.") (statement of Sen. Reid).[8] Overall, the PLRA's toolbox of

---

[8] *See also* 141 Cong. Rec. 27,042 (1995) ("Indeed, I do not want to prevent inmates from raising legitimate claims. This legislation will not prevent those claims from being raised.") (statement of Sen. Hatch); *id.* at 27,044 ("[The PLRA] will allow meritorious

controls is "designed to filter out the bad claims [filed by prisoners] and facilitate consideration of the good." *Jones*, 549 U.S. at 204.

The text of the PLRA itself reflects Congress's desire to facilitate the filing of meritorious prisoner claims, while also seeking to deter the frivolous ones. The statute contains various safety-valves, among them: prisoners with three strikes can file lawsuits when placed in imminent danger of serious physical harm, and an indigent federal prisoner shall not be precluded from filing a lawsuit despite being unable to satisfy the initial partial filing requirement. *See supra* p. 3. A Congress bent on achieving deterrence at all cost would not have included such measures.

B. The Per-Prisoner Approach, But Not the Per-Case Approach, Effectuates the PLRA's Competing Goals

Congress's dual purposes – *i.e.*, deterring frivolous prisoner cases and preserving the incentive to file meritorious ones – are both served by sequential collection of filing fees owed for multiple cases or appeals, whereas simultaneous collection exalts the deterrence of frivolous lawsuits at the substantial expense of ensuring the continued filing of meritorious ones. To see this, compare first the expense of filing a case or appeal against the rate of prisoner wages (given that the 20% installment payment under § 1915(b)(2) is computed on the prisoner's "preceding month's *income*," 28 U.S.C. § 1915(b)(2) (emphasis added)).

---

claims to be filed, but gives the judge broader discretion to prevent frivolous and malicious lawsuits filed by prison inmates.") (statement of Sen. Thurmond).

Currently, the filing fee for a case in a federal district court is $350. 28 U.S.C. § 1914(a). An appeal costs $505 to file in a circuit. *Id.* §§ 1913, 1917. Meanwhile, federal prisoner wages (and stipends) are meager. Federal prisoners can earn between $0.23 per hour and $1.15 per hour. *See* Fed. Bureau of Prisons, Progr. Stmt. 8120.02 - Work Programs for Inmates-FPI § 345.51 at ch. 5, p. 1 (July 15, 1999), http://www.bop.gov/policy/progstat/8120_002.pdf. Some state prisoners (whose suits in federal court likewise are subject to the PLRA, *see infra* p. 51) earn comparable wages, or even less.[9] In light of these figures, even if one were to

---

[9] *See, e.g., Castle v. Eurofresh, Inc.*, 731 F.3d 901, 903 (9th Cir. 2013) (wages for prisoners participating in Arizona's work program range from $0.10 to $0.50 per hour); *Washlefske v. Winston*, 234 F.3d 179, 181 (4th Cir. 2000) (Virginia state prisoners receive approximately $0.90 per hour); *Gambetta v. Prison Rehabilitative Indus. & Diversified Enters., Inc.*, 112 F.3d 1119, 1121 (11th Cir. 1997) (in Florida, prisoners earn $0.45 to $0.50 per hour, "some of which goes to repay the cost of incarceration, some to victim restitution, and some into the inmate's account"); *see also* La. Dep't of Pub. Safety & Corr., Offender Incentive Pay & Other Wage Compensation (La. Admin. Code tit. 22, § 331), (providing that Louisiana state prisoners can earn between $0.02 and $1.00 per hour); Jennifer Brady & Amanda Gordon, Conn. Gen. Assembly Office of Legislative Research, *Inmate Work Activities (2011-R-0191)* at 4-6 (May 6, 2011), http://www.pia.ca.gov/-About_PIA/FastFacts.html (noting that Connecticut prisoners are paid between $0.30 and $1.75 per hour); State of California Prison Industry Auth., Fast Facts, http://www.pia.ca.gov/About_PIA/FastFacts.html ("Inmates receive wages of $.30 to $.95 per hour before deductions"). Some prisoners may also receive a small monthly stipend. *See, e.g., Turley v. Rednour*, 729 F.3d 645, 653 (7th Cir. 2013) (discussing $10 per month stipend for prisoners); *Johns v. Lemmon*, 980 F. Supp. 2d 1055, 1057 (N.D. Ind. 2013) (noting that prisoners receive between $9 and $12.50 a month in "idle pay"); *Losee v. Maschner*, 113 F. Supp. 2d 1343, 1345 (S.D.

assume that a prisoner worked forty hours per week, consistently received the highest wages available, and dedicated every penny earned to the payment of his filing fees, it would still take months to satisfy a single filing-fee-related debt. The payment of several filing fees, when placed together sequentially, takes progressively even longer.

The economic cost of a single 20% monthly payment, and the prospect of that 20% debit occurring for ever-increasing lengths of time if a new case is filed (considering the prisoner's scanty income and the size of the filing fee), is a significant deterrent for an indigent prisoner contemplating bringing a frivolous claim and, therefore, comports with Congress's objective of deterring abusive filings. Sequential collection still requires all IFP prisoners eventually to pay these filing fees in full – "it is merely a question of timing." *Torres v. O'Quinn*, 612 F.3d 237, 246 (4th Cir. 2010). Eventual payment – and the "modest" sting it inflicts – is exactly what the PLRA's proponents anticipated. 141 Cong. Rec. S7526 (daily ed. May 25, 1995) (statement of Sen. Kyl); *see id.* at S14,413-14 (daily ed. Sept. 27, 1995) ("[W]hen prisoners know that they will have to pay these costs – perhaps not at the time of filing, but eventually – they will be less inclined to file a lawsuit in the first place.") (statement of Sen. Dole).[10]

Iowa 1998) ("every 28 days Losee's inmate account is credited with $7.70 in idle pay").

[10] The Seventh Circuit has criticized the per-prisoner approach because, in its view, sequential collection "postpon[es] payment of the fees for later-filed suits until after the end of imprisonment (and likely avoiding them altogether)." *Newlin v. Helman*, 123 F.3d 429, 436 (7th Cir. 1997). But this conclusion is far from

Still, the disincentive to filing a new case or appeal would not be so great under the per-prisoner approach as to thwart the PLRA's desire to ensure that meritorious prisoner lawsuits continue to be filed. An indigent prisoner who contemplates filing a meritorious claim would not face the prospect of losing an *additional* 20% per month of his minimal income (and for a long period, because of the size of filing fees) if he files the lawsuit; rather, the consequence under the per-prisoner approach of the suit's filing is to add to the time period for which the 20% monthly exaction will be made (with even the possibility of someday obtaining reimbursement for the filing fee in the queue through a cost award at the close of the meritorious litigation). The prisoner will no doubt "think before bringing [the] claim[]" in case he incorrectly estimates the likelihood of success, but he will not fear "unacceptable hardship[] in order to pursue judicial redress." *Siluk v. Merwin*, 783 F.3d 421, 432 (3d Cir. 2015).

---

certain. First, all of the courts of appeals agree that if a prisoner's installment payments came due but were not paid during incarceration, those payment obligations are not forgiven upon release. *DeBlasio v. Gilmore*, 315 F.3d 396, 398-99 (4th Cir. 2003) (listing cases). Second, to the extent that some installment payments did not come due during incarceration, some courts have held that the released prisoner's obligation to pay the balance owed on those fees is generally "determined, like any non-prisoner, solely by whether he qualifies for i.f.p. status," *McGann v. Comm'r, Soc. Sec. Admin.*, 96 F.3d 28, 30 (2d Cir. 1996), while others have gone even further, holding that released prisoners must eventually pay the full amounts of any filing fees owed, no matter what their financial circumstances are upon release. *Gay v. Tex. Dep't of Corr. State Jail Div.*, 117 F.3d 240, 242 (5th Cir. 1997); *Putzer v. Attal*, No. 2:13-CV-00165-APG, 2013 WL 4519351, at *3 (D. Nev. Aug. 23, 2013).

The incentives are different under the per-case approach, and unacceptable in light of the PLRA's dual objectives. There is heavy-handed discouragement of the filing of frivolous cases, because every time the indigent prisoner does so, he loses another 20% per month of current income, quickly reaching 100% of his income as the filings progress to five. As well, there is accompanying suffocation of any impetus to file the meritorious claims. The burden of losing 20% more per month for each legitimate case is significant, considering the prisoner's low wages in the first place. And if the prisoner miscalculates as to the merit of the case, and loses, the additional 20% subtractions per case (up to 100%) will continue long into the future, as the filing fees are incrementally paid. The situation quickly "crosses the line from deterrence to punishment [for filing cases] and was not the intent behind § 1915." *Torres*, 612 F.3d at 247.

C. The PLRA's Multiple Controls Have Already Succeeded in Reducing Prisoner Litigation, Making a Per-Case Sanction Unnecessary

The PLRA has already dramatically reduced the sheer volume of prison cases – by more than half since 1995. "Prison and jail inmates filed twenty-six federal cases per thousand inmates in 1995." Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America's Jails & Prisons: The Case for Amending the Prison Litigation Reform Act*, 11 U. Pa. J. Const. L. 139, 141 (2008). By 2006, this figure had decreased to "less than eleven cases per thousand inmates, a decline of 60%." *Id.* at 141-42.

This Court has previously attributed the sharp decline in prisoner litigation to the PLRA's requirement, at 28 U.S.C. § 1915A, that the district courts screen prisoners' complaints against government officials before docketing and dismiss any that are "frivolous," "malicious," meritless, or barred by qualified immunity. *Woodford*, 548 U.S. at 95 n.4. It has likewise credited the three-strikes rule for reducing the number of filings. *Id.* at 84. Still further, the Court has highlighted the PLRA's exhaustion provision, codified at 42 U.S.C. § 1997e(a), as "a centerpiece of the PLRA's effort to reduce the quantity . of prisoner suits." *Woodford*, 548 U.S. at 83 (internal quotation marks omitted). Plus, the PLRA instituted other similar controls on frivolous filings, including a district court's right to dismiss any meritless or abusive case *sua sponte* and to bar an appeal IFP that the district court certifies is not taken in good faith (*see supra* p. 5). Last, the initial partial filing fee requirement, which always applies, powerfully discourages a prisoner from wasting his limited funds on a new frivolous action. Regardless of which of these filters was the precise cause of the decline in prisoner litigation, the 60% drop in filings demonstrates that the statute already serves its primary purpose of preventing "sportive [prisoner] filings in federal court." *Skinner*, 562 U.S. at 535.

Admittedly, the per-case approach could reduce the quantity of prison litigation even further. But "no legislation pursues its purposes at all costs," let alone one purpose at the expense of another existing objective. *Rodriguez v. United States*, 480 U.S. 522, 525-26 (1987); *see also Mohamad v. Palestinian Auth.*, 132 S. Ct. 1702, 1710 (2012) (same). Deciding which of the

PLRA's two competing values "will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice – and it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law." *Rodriguez*, 480 U.S. at 526.

IV. THE CANON OF STATUTORY CONSTRUCTION UNDER WHICH COURTS SEEK TO AVOID CONSTITUTIONAL QUESTIONS COMPELS THE PER-PRISONER APPROACH

The per-prisoner approach is the better interpretation of § 1915(b)(2) when viewed through the lens of the constitutional-avoidance doctrine. As this Court has explained: "[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). "[O]ne of the canon's chief justifications is that it allows courts to *avoid* the decision of constitutional questions. It is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts." *Clark v. Suarez Martinez*, 543 U.S. 371, 381 (2005) (emphasis in original). Here, as three courts of appeals have recognized, the per-case interpretation raises serious constitutional doubts, while the per-prisoner approach does not. *See Siluk v. Merwin*, 783 F.3d 421, 434-36 (3d Cir.

2015); *Torres v. O'Quinn*, 612 F.3d 237, 243, 247-48 (4th Cir. 2010); *Whitfield v. Scully*, 241 F.3d 264, 277 (2d Cir. 2001). Hence, because the per-prisoner approach is an "acceptable" and "plausible" interpretation of § 1915(b)(2) (and even the textually required one), the Court should adopt that construction so as to avoid constitutional problems.

The constitutional guarantee at risk under the per-case approach is the right of unimpeded access to the courts in cases involving important underlying rights. "Decisions of this Court have grounded the right of access to courts in the Article IV Privileges and Immunities Clause," "the First Amendment Petition Clause," "the Fifth Amendment Due Process Clause," and "the Fourteenth Amendment Equal Protection and Due Process Clauses." *Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002) (citations omitted). In particular, the right cannot be hampered when the prospective litigant is seeking to vindicate fundamental rights. The Court has held, for example, that indigent litigants cannot be required to pay filing fees in matters of great importance, such as obtaining a divorce, *Boddie v. Connecticut*, 401 U.S. 371, 382-83 (1971), and appealing a termination of parental rights, *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). Less important rights do not enjoy a right of access to the courts for their vindication. *See, e.g., United States v. Kras*, 409 U.S. 434, 446 (1973) (upholding a bankruptcy court filing fee because "[t]here is no constitutional right to obtain a discharge of one's debts in bankruptcy.").

In the context of prisoners, the Court has been equally clear about the right of court access. Indigent prisoners cannot be required to pay fees that they

cannot afford as a condition of gaining access to court. *See, e.g., Griffin v. Illinois*, 351 U.S. 12, 17 (1956) (requiring waiver of transcript fees); *Burns v. Ohio*, 360 U.S. 252, 258 (1959) (requiring waiver of filing fees). Though these foundational cases dealt with prisoners challenging their own criminal convictions, the Court has since recognized that the right extends to other vitally important claims, such as civil rights claims. *E.g., Bounds v. Smith*, 430 U.S. 817, 827-28 (1977); *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974); *see generally Thomas v. Holder*, 750 F.3d 899, 909 (D.C. Cir. 2014) (Tatel, J., concurring) (summarizing relevant Supreme Court precedent and expressing "grave doubts" about the constitutionality of the PLRA's three-strikes provision, to the extent that it would prevent indigent prisoners from gaining access to the courts "in order to bring claims involving fundamental constitutional rights").

Prisoners, of course, enjoy no right of court access to pursue claims that are frivolous. *See Lewis v. Casey*, 518 U.S. 343, 353 & n.3 (1996). But as this Court's own holdings make clear, many prisoner lawsuits are not only non-frivolous, but successful on the merits, often resulting in the vindication of important rights.[11]

---

[11] *E.g., Holt v. Hobbs*, 135 S. Ct. 853 (2015) (holding that prison regulation violated Religious Land Use and Institutionalized Persons Act by preventing prisoner from growing ½-inch beard in accordance with his religious beliefs); *Brown v. Plata*, 131 S. Ct. 1910 (2011) (upholding order requiring California prison system to reduce overcrowding, which had led to inadequate provision of medical care in violation of the Eighth Amendment); *Johnson v. California*, 543 U.S. 499 (2005) (holding that racial classifications in prison are subject to strict scrutiny); *Hope v. Pelzer*, 536 U.S.

The per-case approach, unlike the per-prisoner approach, may infringe the right of court access to vindicate fundamental rights. Imposition of the per-case method would mean that some indigent prisoners seeking to vindicate important rights through the courts would have to choose between pursuing their claims (thereby incurring increasing 20% monthly outlays until all of their income is sapped) and keeping any measure of discretionary income. Faced with this choice, the prisoner may forego the lawsuit, notwithstanding a fundamental right being at issue.

It is true, that unless a prisoner is subject to the PLRA's three-strikes provision (28 U.S.C. § 1915(g)), the safety-valve measure in § 1915(b)(4) allows him to bring a new lawsuit, even if he has no assets and cannot afford the initial partial filing fee. So, it might be argued that there is no constitutional problem with the per-case approach, because access to the courts still exists even if 100% of the prisoner's monthly income is taken every month. But a law can impermissibly bur-

---

730 (2002) (affirming holding that prison "hitching post" violated Eighth Amendment); *Hudson v. McMillian*, 503 U.S. 1, 4 (1992) (holding that prison guards violated prisoner's Eighth Amendment rights when they shackled and beat him while their supervisor told them "not to have too much fun"); *Smith v. Wade*, 461 U.S. 30 (1983) (upholding punitive damage award against a prison guard found liable for harassing, beating, and raping a prisoner); *Hutto v. Finney*, 437 U.S. 678, 687 (1978) (upholding ruling in favor of prisoners, finding that "conditions in . . . isolation cells . . . violate[d] the prohibition against cruel and unusual punishment"). The lawsuit Bruce here sought to join involves challenges to the conditions of his confinement and rests on the Eighth Amendment right to be free from cruel and unusual punishment. *See supra* p. 7.

den the exercise of a constitutional right even if it does not altogether preclude the exercise of that right. In *United States v. Jackson*, 390 U.S. 570 (1968), the Court addressed a federal kidnapping statute that allowed for the imposition of the death penalty only when ordered by the jury. *Id.* at 570-71. The Court found that statutory provision unconstitutional because it impermissibly abridged the defendants' exercise of their Sixth Amendment right to a trial by jury. *Id.* at 581-83. Though, as the Court recognized, Congress's purpose had been to avoid mandatory imposition of the death penalty in every case, the statute had the unintended consequence of deterring defendants from invoking their right to a jury trial by creating the risk of death only when defendants exercised that right, and not when they pleaded guilty or requested a bench trial. *Id.* at 581-82. The defendants, of course, still *could* exercise their right to trial by jury, but they were deterred from doing so. The Court explained that "[w]hatever might be said of Congress' objectives, they cannot be pursued by means that needlessly *chill* the exercise of basic constitutional rights." *Id.* at 582 (emphasis added). "The question is not whether the chilling effect is 'incidental' rather than intentional; the question is whether that effect is unnecessary and therefore excessive." *Id.*

So too here, though one of the purposes of § 1915(b)(2) is undoubtedly to deter prisoners from filing frivolous lawsuits, the per-case approach would have the unintended consequence of deterring the filing of meritorious lawsuits as well, including those involving fundamental-rights claims. Again, under the per-case approach, prisoners who seek to exercise their right of access to the courts even a modest number of times

will face the prospect of losing all or nearly all of their discretionary income. *See supra* p. 30 (describing how a single case can result in five encumbrances, due to district court and appellate filing fees and costs).

While prisons are required to supply prisoners with the bare necessities of life, prisoners use their discretionary income to acquire a few simple amenities to make life in prison slightly more bearable. Prisoners generally must use their own funds to make phone calls to family and friends, or mail letters to loved ones, or buy items for simple amusement or intellectual stimulation, such as reading materials or a chess set. *See, e.g.*, 28 C.F.R. § 540.21 ("Payment of postage"); 28 C.F.R. § 540.105 ("Expenses of inmate telephone use"); Florence Federal Prison Camp Commissary List, http://www.bop.gov/locations/institutions/flm/FLX_CommList.pdf (last visited on Aug. 10, 2015).[12] Under the per-case approach, then, some prisoners will be faced with the dilemma of choosing between either forfeiting all of their income as the price to be paid for court access, or, alternatively, keeping some discretionary income and enduring

---

[12] *See also* S.D. Dep't of Corr., Frequent Questions, http://doc.sd.gov/about/faq/mail.aspx (to send letters, prisoners must purchase paper, stamps, and envelopes from the prison commissary); Mich. Dep't of Corr., Family Information Packet, p. 11, http//ww.michigan.gov/documents/corrections/Family_Information_Packet_2013-01-15_408528_7.pdf (inmates must pay for "electronic stamps" in order to send email messages to family members and others); Utah Dep't Corr., How to Buy Books and Magazines for an Inmate, http://corrections.utah.gov/index.php?option=com_content&view=article&id=1048:how-to&catid=20&Itemid=164 ("[b]ooks may only be purchased through the prison Commissary").

fundamental-rights violations without seeking legal recourse. That is an unnecessary "chill" (in the terms of *Jackson*) on a constitutional right, and unnecessary because the per-prisoner approach is available. *Cf. Fuller v. Oregon*, 417 U.S. 40, 53-54 (1974) (holding, in context of state statute requiring later recoupment of counsel fees for appointed counsel in criminal case, that careful tailoring of the law to avoid hardship to indigent person was necessary to escape Sixth Amendment problem).

In sum, the per-case method's burden on the right of access to the courts is unnecessary and therefore constitutionally suspect. The per-prisoner approach to fee-collection, in combination with the other controls put in place by the PLRA, *see supra* p. 41, is more than sufficient to deter prisoners from filing frivolous lawsuits. To avoid the constitutional question posed by the per-case approach, the Court should side with the per-prisoner approach.[13]

---

[13] Though not, strictly speaking, a canon of statutory construction, the Court has applied standards of compassion when dealing with *pro se* and IFP litigants. *See Castro v. United States*, 540 U.S. 375, 381 (2003) (*pro se* litigants); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (same); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (same); *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 203 (1993) (IFP litigants); *Adkins v. E. I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948) (same). The vast majority of prisoners bringing lawsuits proceed *pro se*. *See* United States Courts, *Table S-23, Civil Pro Se And Non-Pro Se Filings, by District* (Sept. 30, 2010), http://www.uscourts.gov/statistics/table/c-13/judicial-business/2010/09/30. Under its cases demanding leniency and charity toward *pro se* and IFP filers, the Court would be warranted in choosing, when, as here, faced with two competing statutory constructions affecting *pro se* IFP liti-

V. ADMINISTRATIVE FEASIBILITY CONSIDERATIONS NECESSITATE THE PER-PRISONER APPROACH

The per-prisoner approach is administratively more convenient than the per-case approach and also less likely to interfere with the normal functioning of state correctional facilities and court systems. As a result, the better understanding of § 1915(b)(2) is that Congress intended to have multiple filing fees collected sequentially rather than simultaneously.

A. The per-prisoner approach is more sensible because it avoids situations in which the monetary yield from filing-fee collection will be dwarfed by the administrative costs associated with collecting the payments and then forwarding them to the appropriate courts. Under a sequential regime, the agency having custody of the prisoner collects a single installment payment and forwards it to the clerk of a single court. After the first filing fee is paid off, if the prisoner owes a second filing fee, then the prison begins sending payments to the next court. Under a simultaneous-collection regime, prisons would need to send as many as five checks for five different cases, possibly to five different courts. When the amount collected from the prisoner is small – as presumably it often will be, given that the prisoners subject to the installment plan are indigent – the collection process for the per-case approach devolves into an exercise in frivolity. For example, if a prisoner earns $10 in a given month, the prison will

---

gants, the option that works the least harshly on them. In this instance, that is the per-prisoner approach under § 1915(b)(2).

have to cut five checks for just $2 each and then send those checks to as many as five different court clerks.

The procedure under the per-case approach borders on absurdity if the prisoner earns a miniscule amount of money in a given month. Consider, for example, a prisoner who has exactly $10 in his account at the beginning of the month. That month, he earns a mere $2.[14] The next month, because the amount in the prisoner's account "exceeds $10" and § 1915(b)(2) operates by taking only a share of the "preceding month's *income*" (not the opening balance), 28 U.S.C. § 1915(b)(2) (emphasis added), the prison distributes a certain percentage of only $2 (*i.e.*, the preceding month's income). If the prisoner owes five filing fees (or costs), the prison takes the entire $2 and divides it five ways, sending out five payments, each for 40 cents. The prison and the courts must therefore expend resources calculating, sending, receiving, and tracking five different payments, each of which is worth less than a postage stamp. The per-prisoner approach, which requires sending just one payment (two if there are costs), is far simpler and imposes less of an administrative burden on the correctional facilities and courts charged with carrying out § 1915(b)(2).

B. The per-case approach is more complicated than the per-prisoner approach because it entails all of the administrative challenges of *both* regimes. Under the per-prisoner approach, the prison keeps track of the order in which the filing fees (and costs) are incurred

---

[14] This is not an unrealistic hypothetical. In Louisiana, for example, some prisoners earn as little as $.02 per hour of work. *See supra* p. 37 n.9.

and sees to it that they are paid off in sequential order. When the first filing fee is paid off, the prison begins sending payments for the second one.

Under the per-case approach, the prison sends out additional monthly payments each time the prisoner files a new lawsuit and incurs a new filing-fee obligation, such that – as explained above – the prison will send multiple payments simultaneously. But once a prisoner owes more than five filing fees or costs, the per-case approach presumably becomes both simultaneous *and* sequential. *See supra* p. 24. Given that prisons cannot collect more than 100% of a prisoner's income, the sixth (and seventh and eighth) filing fee must wait in line until the prisoner's first fee is paid off. The prison, consequently, must send out five payments at a time while keeping track of when each payment obligation will be satisfied, so that it can then forward payments for the next filing fee.

C. The per-case approach creates considerable administrative confusion for state correctional facilities, which are responsible for handling payments under the PLRA for state prisoners pursuing federal lawsuits and appeals. Section 1915(b)(2)'s collection instruction, again, is to the "agency having custody of the prisoner" and is not limited to federal prison authorities. "Prisoner" subject to the PLRA "means any person incarcerated or detained in *any* facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." 28 U.S.C. § 1915(h) (emphasis added).

The confusion arises from the fact that the states deduct money from prisoners' incomes in order to meet a wide range of other financial obligations that they impose on their prisoners. These include medical co-payments, restitution payments, child-support payments, incarceration or "pay-to-stay" fees, and disciplinary fees.[15] Moreover, state prisoners may owe fees for lawsuits or appeals filed in state courts. Many states have enacted statutes that are virtually identical to the federal PLRA, requiring prisoners to pay filing fees on an installment basis.[16]

---

[15] *E.g.*, State of Ala. Dep't of Corr. Admin. Reg. No. 703, *Inmate Co-Payment for Health Services* (June 1, 2013), http://www.doc.state.al.us/docs/AdminRegs/AR703.pdf (medical co-payments); Utah Dep't Corr., *Inmate Health Care, Q&A: Do Inmates Have Co-Pay Charges?*, http://corrections.utah.gov/ index.php?option=com_content&view=article&id=1054:health-care &catid=20&Itemid=182 (medical co-payments); Cal. Dep't of Corr. & Rehab., *Office of Victim & Survivor Rights & Services*, http://www.cdcr.ca.gov/victim_services/ restitution_collections. html (restitution); Report of the State Auditor, *Inmate Restitution and Child Support: Performance Audit*, at 29 (Mar. 2013), http://www.leg.state.co.us/OSA/coauditor1.nsf/All/70B1E72841 FDC5A187256E280064A65A/$FILE/1477%20Inmate%20 Restitution%20Perf%20FY03.pdf (child support); Alison Bo Andolena, *Can They Lock You Up and Charge You For It?: How Pay-to-Stay Corrections Programs May Provide a Financial Solution for New York and New Jersey*, at 106-08, 35 Seton Hall Legis. J. 94, 106-08 (2010) http://scholarship.shu.edu/ cgi/viewcontent.cgi?article= 1003&context=shlj (pay-to-stay fees); State of Tenn., Dep't of Corr., *Administrative Policies and Procedures: Disciplinary Punishment Guidelines*, at 4, § VI.K (effective June 1, 2012), http://www.state.tn.us/correction/pdf/502-02.pdf (disciplinary fees).

[16] *E.g.*, Colo. Rev. Stat. Ann. § 13-17.5-103; Idaho Code Ann. § 31-3220A; La. Rev. Stat. Ann. 15:1186; Mass. Gen. Laws Ann. ch.

With so many competing payment obligations, state correctional facilities must decide which obligations take precedence. Under the per-case approach, this task becomes substantially more difficult than it would under the per-prisoner approach. With payment obligations for federal filing fees rising and falling between zero and 100%, and given federal supremacy over state law and the obligatory language of subsection (b)(2) (*see* 28 U.S.C. § 1915(b)(2) ("[t]he agency having custody of the prisoner *shall* forward payments") (emphasis added)), state facilities could be compelled to recalibrate frequently how much of their prisoners' incomes is withdrawn to meet state obligations. For example, a state prisoner owing one federal filing fee would have 80% of his income left, some of which the state could collect for its own purposes. But as that same prisoner files additional federal lawsuits and appeals, he will have increasingly less income (and eventually no income) to spare.

Such a scenario, resulting from the per-case approach, would not only be administratively cumbersome, it would also frustrate many state objectives that are carried out through the management of prisoner incomes. These problems can be avoided if installment payments under § 1915(b)(2) are capped at a flat rate of 20%, resulting in less fluctuation in the amounts withheld, and always leaving plenty of prisoner income (in relative terms) for state purposes.

261, § 29; Mich. Comp. Laws Ann. § 600.2963; Mo. Ann. Stat. § 506.372; Okla. Stat. Ann. tit. 57, § 566.3; 42 Pa. Cons. Stat. Ann. § 6602; S.C. Code Ann. § 24-27-100; Tenn. Code Ann. § 41-21-807.

CONCLUSION

The decision of the D.C. Circuit refusing to stay collection of Bruce's portion of the filing fee owed for the mandamus petition should be reversed.

Respectfully submitted,

ANTHONY F. SHELLEY
Counsel of Record
LAURA G. FERGUSON
DAWN E. MURPHY-JOHNSON
ADAM W. BRASKICH
KATHLEEN T. WACH
MILLER & CHEVALIER CHARTERED
655 15th Street NW, Suite 900
Washington, D.C. 20005
(202) 626-5800
Email: ashelley@milchev.com

AUGUST 2015

APPENDIX

28 U.S.C. § 1915 Proceedings in forma pauperis

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record

on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.